

§§ 1951.233–1951.239

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grantee. See §1951.215 for additional guidance on grant agreements.

(c) *Lease-purchase arrangement.* If §1951.232(b) (1) and (2) of this section are not practicable, the urban community may, with prior approval of the National Office, operate and maintain the system under a lease-purchase arrangement which provides that:

(1) The urban community will:

(i) Assume responsibility for operation and maintenance of the facility, subject to nondiscrimination and all other requirements which are applicable to the borrower, which are to be specified in the agreement between the parties; and

(ii) Pay the association annually an amount sufficient to enable it to meet all its obligations, including reserve account requirements.

(2) The FmHA or its successor agency under Public Law 103–354 borrower will:

(i) Meet its debt service and reserve account requirements to FmHA or its successor agency under Public Law 103–354;

(ii) Retain its corporate existence until FmHA or its successor agency under Public Law 103–354 has been paid in full; and

(iii) If agreed upon by both parties, convey title to the facility to the urban community when the FmHA or its successor agency under Public Law 103–354 debt has been paid in full.

(d) *Processing.* (1) Sale of a borrower's assets will be handled in accordance with §1951.226 of this subpart.

(2) Transfer and assumption of a borrower's assets and indebtedness will be handled in accordance with §1951.230 of this subpart.

(3) Lease-operation-to-purchase arrangements are not permitted.

(4) When a lease-purchase arrangement is proposed, the State Director will obtain a proposed agreement drafted by either the borrower or the urban community. The following will be forwarded to the Administrator, Attention: Water and Waste Disposal Division, for review and approval authorization:

(i) A copy of the proposed agreement;

(ii) Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office), appropriately completed;

(iii) OGC comments;

(iv) The case file, including all documentation appropriate for the type of servicing action involved.

[55 FR 4399, Feb. 8, 1992, as amended at 57 FR 21199, May 19, 1992]

§§ 1951.233–1951.239 [Reserved]

§ 1951.240 State Director's additional authorizations and guidance.

(a) *Promote financing purposes and improve or maintain collectibility.* The State Director is authorized to perform the following functions when the action is determined likely to promote the loan or grant purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security; will strengthen the security; or will facilitate, improve, or maintain the orderly collection of the loan:

(1) Approve requests for permission to modify bylaws, articles of incorporation, or other rules and regulations of recipients, including changes in rate or fee schedules. Changes affecting the recipient's legal organizational structure must be approved by OGC.

(2) Consent to requests by the recipient to incur additional indebtedness, subject to applicable FmHA or its successor agency under Public Law 103–354 instructions and covenants in the loan or grant agreement.

(3) Renew existing security instruments.

(4) Approve the extension or expansion of facilities and services.

(5) Require additional security when:

(i) Existing security is inadequate and the loan or security instruments obligate the borrower to give additional security; or

(ii) The loan is in default and additional security is acceptable in lieu of other servicing actions.

(6) Release properties being sold by the borrower from mortgages securing Rural Renewal loans if the amount of the notes and mortgages given by the purchaser to the borrower equal the present market value and are assigned and pledged to FmHA or its successor agency under Public Law 103–354, and any money payable to the borrower is applied as an extra payment on the Rural Renewal loan.

(7) Approve requests for rights-of-way and easements and any subordination necessary in connection with such requests.

(b) *Referrals to National Office.* All proposed servicing actions which the State Director is not authorized by this subpart to approve will be referred to the National Office.

(c) *Defeasance of FmHA or its successor agency under Public Law 103-354 indebtedness.* Defeasance is the use of invested proceeds from a new bond issue to repay outstanding bonds in accordance with the repayment schedule of the outstanding bonds. The new issue supersedes the contractual agreements the borrower agreed to in the prior issue. Defeasance, or amending outstanding loan instruments and agreements to permit defeasance, of FmHA or its successor agency under Public Law 103-354 debt instruments is not authorized, since defeasance limits, or eliminates entirely, the borrower's ability to comply with statutory refinancing requirements implemented by subpart F of part 1951 of this chapter.

§ 1951.241 Special provision for interest rate change.

(a) *General.* Effective October 1, 1981, and thereafter, upon request of the borrower, the interest rate charged by FmHA or its successor agency under Public Law 103-354 to water and waste disposal and community facility borrowers shall be the lower of the rates in effect at either the time of loan approval or loan closing. Pub. L. 99-88 provides that any FmHA or its successor agency under Public Law 103-354 grant funds associated with such loans shall be set in the amount based on the interest rate in effect at the time of loan approval. Loans closed October 1, 1981, through October 25, 1985, were closed at the interest rate in effect at the time of loan approval and that interest rate is reflected in the borrower's debt instrument. For community facility and water and waste disposal loans closed on or after October 1, 1981, and for which the interest rate in effect at the time of loan closing is lower than the interest rate in effect at the time of loan approval, the borrower may request to be charged the lower interest rate. The loan closing interest

rate will be determined by FmHA or its successor agency under Public Law 103-354 based upon requirements in effect at the date of loan closing. Exhibit E of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office) contains a summary of interest rate requirements for specific time periods. Exhibit C of Subpart O of this part (available in any FmHA or its successor agency under Public Law 103-354 office) will be used to determine the interest rate and effective dates by category of poverty, intermediate, and market rates. Exhibit F of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office) contains the instructions on how to process a change of interest rate. Loans meeting the criteria of this section that have been paid in full are eligible for the borrower to request the lower interest rate. For loan(s) that involved multiple advances of FmHA or its successor agency under Public Law 103-354 funds using temporary debt instruments, wherein the borrower requests the interest rate in effect at loan closing, the interest rate charged shall be the rate in effect on the date when the first temporary debt instrument was issued.

(b) *Notification to borrower and borrower selection of interest rate.* (1) FmHA or its successor agency under Public Law 103-354 servicing officials will notify each borrower meeting the provisions of this section of the availability of a choice of interest rate. The notification will be made in writing at the earliest possible date, utilizing Exhibit G of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office), and sent by certified mail, return receipt requested. Borrowers will be advised at the time of notification that if a change of interest rate is requested, the change will be accomplished administratively by FmHA or its successor agency under Public Law 103-354. The effect of the change on the loan account will also be fully explained to the borrower.

(2) Borrowers must notify FmHA or its successor agency under Public Law 103-354 within 90 calendar days of the date of FmHA or its successor agency under Public Law 103-354 notification